

1149669

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

**FILED**  
**ACTIONS & PROCEEDINGS**

APR 06 2015

**ERIE COUNTY**  
**CLERK'S OFFICE**

BANK OF AMERICA, N.A.

Plaintiff,

ANSWER

-vs-

Index No. 802982/2015

ELAINE S WENDEL,

Defendant.

Defendant Elaine S. Wendel for her answer to the complaint of the Plaintiff, alleges as follows:

1. Defendant lacks sufficient information to either admit or deny the allegations contained in paragraph 1 Plaintiff's complaint.
2. Defendant admits the allegations contained in paragraph 2 of Plaintiff's complaint.
3. Defendant denies the allegations contained in paragraphs 3, 4, 5, and 6, of Plaintiff's complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:**

4. That Plaintiff fails to state a cause of action for which relief can be granted

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:**

5. That Plaintiff never mailed Defendant a written notice of default as required by the parties agreement as a condition precedent to filing of any lawsuit in this matter.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:**

6. That the instrument or writing upon which the Plaintiff's claims in this case are based do not satisfy the statute of frauds.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:**

7. That this action was filed after the expiration of the applicable statute of limitations and must, therefore, be dismissed.

RECD BY MJF

APR - 9 2015

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:**

8. Plaintiff has not identified the account that the Defendant has allegedly defaulted on

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:**

9. Plaintiff has not alleged the date of default for the account in question.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:**

10. Plaintiff lacks standing to bring this lawsuit against the Defendant.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:**

11. Plaintiff's action is barred by the doctrine of unclean hands.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:**

12. All causes of action alleged in the Complaint are barred by the doctrine of laches.

WHEREFORE, Defendant respectfully requests that judgment be entered against the Plaintiff:

- (a) Dismissing this action with prejudice.
- (b) Granting Defendant the costs and disbursements of this action.
- (c) Granting Defendant her reasonable attorney's fees pursuant to New York General Obligations Law §5-327(2).
- (d) For such other and further relief as may be just and proper.

DATED: April 6, 2015

Elaine S. Wendel  
Elaine S. Wendel

260 Westfield Rd

To Mullooly, Jeffery, Rooney & Hynd Amherst NY. 14226  
6851 Jerricho TRKE P.O. Box 716862 0280  
9036

Syosset NY 11791-9036

JLC 656 5300

RCVD BY MJRF

APR - 9 2015

VERIFICATION

Elsink Wendel, being duly sworn, deposes and says:  
(Insert your name)

I am the defendant. I have read the above answer and know the contents of it.  
The same are true to my knowledge, except as to matters stated to be alleged on  
information and belief and as to those matters I believe them to be true. To the best of  
my knowledge, information and belief, formed after an inquiry reasonable under the  
circumstances, the presentation of these papers of the contentions therein are not  
frivolous as defined in subsection © of section 130-1.1 of the Rules of the Chief  
Administrator (22NYCRR).

Elaine D. Wendel  
(Sign your name in the presence of a Notary Public)

Elsink Wendel  
(Print your name)

860 Westfield Rd  
(Your address)

Amherst NY 14226  
(Your city, state, zip code)

716 862 0280  
(Your telephone number)

Sworn to before me this  
6 day of April, 2015.

David G. Henry  
Notary Public

DAVID G. HENRY  
Notary Public, State Of New York  
Qualified in Erie County  
My Commission Expires July 14, 2015

## NOTICE OF HARD COPY SUBMISSION - - E-FILED CASE

(This Form Must be Annexed to Hard Copy Submissions in E-Filed Cases)

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF Essex

BANK OF AMERICA, N.A.

Plaintiff,

-VS-

Index No. 802982/2015

ELAINE S WENDEL,

Defendant.

indicate the reason for hard copy submission by checking

### Non-Participating Parties

The attached is a court original unless and until uploaded to NYSCEF.

☐ In a consensual case, I am authorized to and have served on all other parties a declaration of consent to e-filing on behalf of my client, a party to the case, or, if self-represented, myself.

☒ In a mandatory case, I am exempt from the requirement to e-file because I have filed with the court the exemption form required by the Rules or the court has granted my application upon good cause shown.

### Participating Parties

#### Submissions Requiring Subsequent E-Filing (parties responsible for upload to NYSCEF)

☐ As allowed by court protocol/procedure, I am submitting a proposed order to show cause and supporting papers seeking a TRO, together with the required showing pursuant to Uniform Rule 202.7(f) and/or Commercial Division Rule 20 demonstrating significant prejudice to the applicant from the giving of notice. If these documents are served in hard copy only, I shall e-file these documents within 3 business days after service.

☐ I am authorized to file this document in hard copy pursuant to an emergency exception and am submitting the explanatory affirmation/affidavit required by the E-Filing Rules. I shall, as required by the Rules, e-file these documents within 3 business days.

☐ I am authorized to file this document in hard copy because of a technical failure on the e-filing site as defined in the E-Filing Rules. I shall, as required by the Rules, e-file these documents within 3 business days after restoration of normal operations at the site.

☐ I am submitting an ex parte application pursuant to statute \_\_\_\_\_. If these documents are served in hard copy only, I shall, as required by the E-Filing Rules, e-file these documents within 3 business days after service.

#### Special Applications/Documents (parties may be responsible for upload to NYSCEF)

☐ I am applying for an order sealing / limiting access to document(s) and I am submitting the application in hard copy form, as permitted by court protocol/procedure.

☐ I am submitting documents for in camera review.

☐ I am filing an exhibit that cannot be e-filed (Rule 202.5-b(d)(6)).

Dated: April 6, 2015  
Elaine S. Wendel (Signature)  
Elaine S Wendel (Name)

\_\_\_\_\_  
(Firm Name)

260 Westfield Rd (Address)  
Amherst NY 14226  
716 862 0280 (Phone)

\_\_\_\_\_  
(E-Mail)

6/20/13

RCVD BY MJR

APR - 9 2015

NOTICE OF HARD COPY SUBMISSION - - E-FILED CASE

EFM - 2

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF Erie

BANK OF AMERICA, N.A.

Plaintiff,

-VS-

Index No. 802482/2015

ELAINE S WENDEL,

Defendant.

**NOTICE OF OPT-OUT FROM PARTICIPATION  
IN ACTION SUBJECT TO MANDATORY ELECTRONIC FILING**

Pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts, I hereby opt out of participation in electronic filing in this mandatory e-filed case.

For Attorneys (or authorized representatives):

I certify in good faith that I am unable to participate in mandatory electronic filing of documents in this case on behalf of my client, \_\_\_\_\_, because [place your initials in the applicable space]:

☐ I lack [check off the applicable box]:

The necessary computer hardware

a connection to the internet

a scanner or other device by which documents may be converted to an electronic format

☐ I lack the knowledge regarding operation of computers and/or scanners needed to participate in electronic filing of documents in this case and no employee of mine or of my firm, office or business who is subject to my direction possesses such knowledge.

For Self-Represented Litigants [place your initials in the space below]:

☒ I choose not to participate in electronic filing of documents in this case.

Dated: April 6 2015

Elaine S Wendel (Signature)  
Elaine S Wendel (Name)

(Firm Name)

260 Westfield Rd (Address)

Armonk NY 14224 (Phone)

716 862 0280

This form must be signed. All contact information must be provided, including the address at which hard-copy documents in this case should be served.

12/9/11

RCVD By MJR

APR - 9 2015